

**THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CRIMINAL CASE NO. 1:06-cr-00052-MR-1**

UNITED STATES OF AMERICA,

vs.

DAVID WILLIAM GRAHAM.

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ORDER

THIS MATTER is before the Court on the Defendant's "Motion under Rule 60(b)6" [Doc. 18].

On August 30, 2006, the Defendant pled guilty pursuant to a written plea agreement to the charge of possession of a firearm after having been convicted of a felony, in violation of 18 U.S.C. § 922(g)(1). [Doc. 1]. On April 5, 2007, the Defendant was sentenced to 188 months' imprisonment. [Doc. 15]. The Defendant did not appeal his sentence or conviction.

On December 26, 2013, the Defendant filed the present motion pursuant to Rule 60(b)(6) of the Federal Rules of Civil Procedure, seeking relief from the Judgment entered in this case on the grounds that the Court erred in designating the Defendant as an armed career criminal. [Doc. 18].

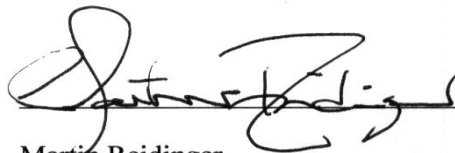
A defendant may not use the Federal Rules of Civil Procedure to challenge his criminal judgment. United States v. Grapes, No. 10-7612,

2011 WL 195672, at *1 (4th Cir. Jan. 21, 2011) (“The Federal Rules of Civil Procedure do not provide a vehicle by which [Defendant] may challenge his criminal judgment.”) (per curiam), cert. denied, 132 S.Ct. 1946, 182 L.Ed.2d 801 (2012); United States v. Leake, 96 F. App’x 873, 873 (4th Cir. 2004) (“[Defendant] cannot challenge an order in his criminal case using the Federal Rules of Civil Procedure....”) (per curiam). Further, Rule 60(b) cannot be used as a substitute for a motion seeking collateral review of a criminal judgment. See United States v. Winestock, 340 F.3d 200, 207 (4th Cir. 2003). Even if the Court could consider the Defendant’s Motion, it would be untimely as it was filed more than five years after the expiration of the time for filing a notice of direct appeal. See United States v. McKelver, 225 F. App’x 185, 186 (4th Cir. 2007) (per curiam).

IT IS, THEREFORE, ORDERED that the Defendant’s Motion [Doc. 18] is **DENIED**.

Signed: January 17, 2014

IT IS SO ORDERED.


Martin Reidinger
United States District Judge

